

1 Beth E. Terrell, WSBA # 26759
2 Erika L. Nusser, WSBA #40854
3 Attorneys for the Plaintiff
4 TERRELL MARSHALL DAUDT & WILLIE PLLC
5 936 N. 34th Street, Suite 400
6 Seattle, Washington 98103
7 Telephone: (206) 816-6603
Facsimile: (206) 350-3528
Email: bterrell@tmdwlaw.com
Email: enusser@tmdwlaw.com

[Additional Counsel Appear on Signature Page]

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

LILA HOBBS, an Alaska resident,

Plaintiff,

V.

THE CORPORATION OF GONZAGA
UNIVERSITY, a Washington Non-
Profit Corporation,

Defendant.

NO. 2:10-cv-00292-EFS

STIPULATED PROTECTIVE ORDER

It is hereby stipulated by the parties, through their undersigned attorneys, as follows:

1 **I. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this case may involve production of
 3 confidential or private information for which special protection from public
 4 disclosure would be warranted. The parties acknowledge that this Stipulation
 5 does not confer blanket protections on all disclosures or responses to discovery
 6 and that the protection it affords extends only to the limited information or items
 7 that are entitled under the applicable legal principles to treatment as confidential.
 8 The parties further acknowledge that this Stipulation creates no entitlement to file
 9 confidential information under seal; the procedures that must be followed and the
 10 standards that will be applied when a party seeks permission from the Court to
 11 file material under seal are those provided by the relevant law and Court rules.

12 **II. DEFINITIONS**

13 1. Party: Any party to this action, including all of his, her or its
 14 officers, directors, employees, consultants, retained experts, and Outside Counsel
 15 (and their support staff).

16 2. Disclosure or Discovery Material: All items or information,
 17 regardless of the medium or manner generated, stored or maintained (including,
 18 among other things, testimony, transcripts, or tangible things) that are produced
 19 or generated in disclosures or responses to discovery in this matter.

20 3. Confidential Information: Information (regardless of how generated,
 21 stored or maintained) or tangible things that qualify for protection under federal
 22 and state law, and under the standards developed under Fed. R. Civ. P. 26(c).

23 4. Designating Party: A Party or non-party that designates Disclosure
 24 or Discovery Material as “Confidential.”

25 5. Protected Material: Any Disclosure or Discovery Material that is
 26 designated “Confidential.”

1 6. Expert: A person with specialized knowledge or experience in a
 2 matter pertinent to the litigation who has been retained by a party or its counsel to
 3 serve as an expert witness or as a consultant in this action.

4 7. Professional Vendor: Persons or entities that provide litigation
 5 support services (*e.g.* photocopying, videotaping, translating, preparing exhibits
 6 or demonstrations, organizing, storing, retrieving data in any form or medium,
 7 etc.) and their employees and subcontractors.

8 **III. DESIGNATION OF CONFIDENTIAL INFORMATION**

9 1. Exercise of Restraint and Care in Designating Material for
 10 Protection: Each party or non-party that designates information or items for
 11 protection under this stipulation must take care to limit any such designation to
 12 specific material that qualifies as Confidential Information. A Designating Party
 13 must take care to designate for protection only those parts of material, documents,
 14 items, or oral or written communications that qualify – so that other portions of
 15 the material, documents, items, or communication for which confidential
 16 protection is not warranted are not designated as Confidential Information. If it
 17 comes to a party's attention that information or items designated as Confidential
 18 Information do not qualify for such protection, that party must promptly notify all
 19 other parties that it is withdrawing the mistaken designation.

20 2. Where practical, the producing party shall designate Confidential
 21 Information in document form by stamping or otherwise marking every page of
 22 the document "Confidential" or some similar language. Other forms of
 23 Confidential Information shall be so marked in any other reasonable manner
 24 appropriate to the form in which the Confidential Information is produced.

25 3. When a party initially produces documents for inspection, no
 26 marking need be made by the producing party in advance of the inspection. For

1 purposes of the inspection, all documents shall be treated as containing
 2 Confidential Information. After documents are selected for copying, the
 3 producing party may appropriately mark the copies of the selected documents as
 4 Confidential Information before they are produced.

5 4. To the extent Plaintiff's Interrogatories and Requests for Production
 6 to Gonzaga call for Gonzaga to release information or documents protected by
 7 FERPA (20 U.S.C. § 1232g) Gonzaga shall produce the requested information
 8 and documents subject to this Stipulation. All parties and their attorneys agree to
 9 treat information and documents protected by FERPA as confidential, except as
 10 necessary to present the parties' claims in the above captioned matter. Plaintiff
 11 and her attorneys further agree not to disseminate any student names, educational
 12 records, or any information from any educational records covered by this
 13 Stipulation to any third party, except in accordance with the terms of this
 14 Stipulation.

15 5. Depositions: No person shall attend portions of depositions pursuant
 16 to Federal Rules of Civil Procedure 30 or 45 at which Confidential Information is
 17 disclosed unless such person is an authorized recipient under the terms of this
 18 Order. If, during the course of a deposition, the response to a question would
 19 require the disclosure of Confidential Information, the witness may refuse to
 20 answer or the party whose Confidential Information would be disclosed may
 21 instruct the witness not to answer or not to complete the answer until any persons
 22 not authorized to receive such information have left the room.

23 6. Within 30 (thirty) days after the completion of the transcript of a
 24 deposition (as certified by the court reporter), counsel for any party or the
 25 deponent may designate portions of the transcript as "Confidential" in a written
 26 notification served on all counsel. Written notification designating Confidential

1 Information shall identify the specific pages and lines of the transcript that
 2 contain Confidential Information. Counsel for each party shall attach a copy of
 3 such notification to the face of the transcript and to each copy of the transcript. In
 4 addition, the portion of the deposition transcript containing Confidential
 5 Information shall be stamped with the appropriate designation. Before the
 6 expiration of such thirty (30) day period, all information disclosed during a
 7 deposition shall be treated as Confidential Information, unless otherwise
 8 designated or agreed by the parties and the witness, or ordered by the Court.

9 7. Challenged Designations: Should any party to whom Confidential
 10 Information is disclosed object to the designation of such materials as
 11 Confidential Information, that party shall notify the party making the designation,
 12 in writing, and request that the party reclassify the document, information or
 13 testimony. The parties agree to seriously consider the materiality of the document
 14 at issue to the litigation before challenging its confidential designation, and that
 15 neither party will challenge any designation in a manner that is calculated simply
 16 to harass or annoy the other party. The parties shall meet and confer in good faith
 17 regarding the designation. If the parties do not otherwise reach agreement or the
 18 designating party does not agree to de-designate the information within ten (10)
 19 court days, the designating party shall initiate, within thirty (30) days, a form of
 20 Joint Rule 37 submittal as set forth in Western District of Washington Local Rule
 21 37.

22 **IV. DISCLOSURE OF CONFIDENTIAL INFORMATION**

23 1. Confidential Information may be disclosed only to the following:
 24 a. The parties' counsel of record in this action, as well as
 25 employees or agents of said counsel to whom it is reasonably necessary to
 26 disclose the information for this litigation;

- 1 b. The officers, directors, and employees of the party to whom
 2 disclosure is reasonably necessary for this litigation, provided such person(s) have
 3 signed the “Agreement to Be Bound” that is attached hereto as Exhibit A;
- 4 c. Parties;
- 5 d. Experts (as defined in this Stipulation) of the party to whom
 6 disclosure is reasonably necessary for this litigation and who have signed the
 7 “Agreement to Be Bound” (Exhibit A);
- 8 e. The Court and its personnel, in accordance with the terms set
 9 forth below;
- 10 f. Court reporters, their staffs, and Professional Vendors to
 11 whom disclosure is reasonably necessary for this litigation;
- 12 g. Insurance representative(s) of the parties to whom disclosure
 13 is reasonably necessary for this litigation;
- 14 h. During their depositions, witnesses in the action to whom
 15 disclosure is reasonably necessary and who have signed the “Agreement to Be
 16 Bound” (Exhibit A). Pages of transcribed deposition testimony or exhibits to
 17 depositions that reveal Confidential Information must be separately bound by the
 18 court reporter and may not be disclosed to anyone except as permitted under this
 19 Order;
- 20 i. Witnesses interviewed by a party’s representatives or counsel,
 21 when such disclosure is reasonably necessary for the purpose of factual
 22 investigation, discovery, or trial preparation, and who have signed the
 23 “Agreement to Be Bound” (Exhibit A); and
- 24 j. The author or addressee of the document, the employee to
 25 which the document or data relates, or the original source of the information.
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1 2. Exceptions:

2 a. Nothing herein shall prohibit a Party, or its counsel of record,
 3 from disclosing a document containing Confidential Information to the person the
 4 document identifies as an author or recipient of such document, or to any person
 5 (including third-party witnesses) for which prior written approval for disclosure
 6 has been granted by the Producing Party. A Party's use for any purpose of its
 7 own documents, which that Party produces in this action, shall not be considered
 8 a violation of this Stipulation.

9 b. Notwithstanding any other provision of this Stipulation to the
 10 contrary, the confidentiality obligations of this Stipulation shall not apply, or shall
 11 cease to apply to any information that:

12 i. At the time of disclosure hereunder, was already
 13 lawfully in the possession of the receiving party and was not acquired through
 14 discovery or under any obligation of confidentiality; or

15 ii. After disclosure hereunder, was lawfully acquired by
 16 the receiving party from a third party lawfully possessing the same and having no
 17 obligation to maintain the confidentiality of the information.

18 **V. RIGHTS RESERVED/HEARINGS/TRIAL**

19 1. The foregoing is without prejudice to the right of any Party:

20 a. To apply to the Court for a protective order relating to any
 21 Confidential Information for use at trial or relating to any discovery in this
 22 litigation;

23 b. To object to the production of documents it considers not
 24 subject to discovery; or

25 c. To apply to the Court for an order compelling production of
 26 documents or modification of this Stipulation or for any order permitting

1 disclosure of Confidential Information material beyond the terms of this
 2 Stipulation.

3 2. The parties will adhere to the Civil Rules and Court rules in seeking
 4 to have any document filed under seal. In particular, the parties will file
 5 Confidential Information under seal in accordance with the rules set forth in
 6 Western District of Washington Local Rule 5(g). Any information or documents
 7 protected by FERPA that are filed with the Court or used in evidence will be
 8 reviewed by the party proposing the documents, and the names and other
 9 identifying details of the students or former students involved will be deleted or
 10 replaced with initials.

11 3. Notwithstanding anything contained in this Stipulation, any
 12 information, testimony, written response to discovery, document, or thing
 13 produced in connection with this litigation may be used at trial unless the
 14 producing party applies to the Court in advance of the pretrial conference for
 15 protection of that information, testimony or written response to discovery,
 16 document or thing at trial. If a timely application for such relief is made, the
 17 Confidential Information at issue in the application shall not be disclosed contrary
 18 to this Stipulation, pending ruling by the Court.

19 **VI. TERMINATION OF LAWSUIT**

20 1. Within thirty (30) days of the conclusion of the trial and of any
 21 appeals, or upon other termination of this litigation, all documents, including,
 22 without limitation, all Confidential Information, received under the provisions of
 23 this Stipulation, shall be tendered back to the producing party upon written
 24 request by that party, or destroyed, at the direction of the producing party in
 25 writing. Any documents, papers, tapes, disks, diskettes, thumb drives, or other
 26 tangible things that include or contain information derived from Confidential

1 Information shall be destroyed, except that privileged documents and information
 2 in Court transcripts derived from Confidential Information need not be destroyed.
 3 This paragraph shall not require the destruction of pleadings and exhibits thereto
 4 which contain Confidential Information. Provisions of this Stipulation shall
 5 continue to be binding on all persons subject to the terms of this Stipulation until
 6 order of this Court.

7 **VII. MISCELLANEOUS**

8 1. In the event anyone shall violate or threaten to violate any terms of
 9 this Stipulation, the aggrieved party may seek any remedy permitted by law,
 10 including but not limited to sanctions for contempt, damages and injunctive relief,
 11 and it shall not be a defense to a request for injunctive relief that the aggrieved
 12 party possesses an adequate remedy at law.

13 2. All persons subject to the terms of this Stipulation agree that this
 14 Court shall retain jurisdiction over them for the purpose of enforcing this
 15 Stipulation.

16 3. This Stipulation may be signed in counterpart by the parties'
 17 respective counsel and when signed shall become binding and effective as to each
 18 such party.

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1 DATED this 14th day of April, 2011.

2 TERRELL MARSHALL
3 DAUDT & WILLIE PLLC

4 By: /s/ Beth E. Terrell, WSBA #26759

Beth E. Terrell, WSBA # 26759
Erika L. Nusser, WSBA #40854
Attorneys for the Plaintiff
936 N. 34th Street, Suite 400
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 350-3528
Email: bterrell@tmdwlaw.com
Email: enusser@tmdwlaw.com

Janet S. Chung, WSBA #28535
Attorneys for the Plaintiff
LEGAL VOICE
907 Pine Street, Suite 500
Seattle, Washington 98101-1818
Telephone: (206) 682-9552
Facsimile: (206) 682-9556
Email: jchung@legalvoice.org

18 *Attorneys for Plaintiff*

EVANS, CRAVEN & LACKIE, P.S.

By: /s/ Christopher J. Kerley, WSBA
#16489

James B. King, WSBA #8723
Christopher J. Kerley,
WSBA #16489
Attorneys for Defendant
818 West Riverside Ave., Suite 250
Spokane, Washington 99201
Telephone: (509) 455-5200
Facsimile: (509) 455-3632
Email: jking@ecl-law.com
Email: ckerley@ecl-law.com

Attorneys for Defendant

ORDER

Based on the foregoing stipulation of the parties:

IT IS SO ORDERED THIS 12th day of May, 2011.

s/ Edward F. Shea

Present by:

**TERRELL MARSHALL
DAUDT & WILLIE PLLC**

EVANS, CRAVEN & LACKIE, P.S.

By: /s/ Beth E. Terrell, WSBA #26759

Beth E. Terrell, WSBA # 26759
Erika L. Nusser, WSBA #40854
Attorneys for the Plaintiff
936 N. 34th Street, Suite 400
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 350-3528
Email: bterrell@tmdwlaw.com
Email: enusser@tmdwlaw.com

By: /s/ Christopher J. Kerley, WSBA
#16489

James B. King, WSBA #8723
Christopher J. Kerley,
WSBA #16489
Attorneys for Defendant
818 West Riverside Ave., Suite 250
Spokane, Washington 99201
Telephone: (509) 455-5200
Facsimile: (509) 455-3632
Email: jking@ecl-law.com
Email: ckerley@ecl-law.com

Attorneys for Defendant

Janet S. Chung, WSBA #28535
Attorneys for the Plaintiff
LEGAL VOICE
907 Pine Street, Suite 500
Seattle, Washington 98101-1818
Telephone: (206) 682-9552
Facsimile: (206) 682-9556
Email: ichung@legalvoice.org

Attorneys for Plaintiff

EXHIBIT A

AGREEMENT TO BE BOUND

I, the undersigned, hereby acknowledge that I have received and read a copy of the Stipulated Protective Order (“Stipulation”) executed by the parties in *Hobbs v. Corporation of Gonzaga University*, United States District Court, Eastern District of Washington, Cause No. 10-00292 EFS; that I understand the provisions of the Stipulation; that I agree to be bound by all provisions of the Stipulation; that I submit to the jurisdiction of the United States District Court for the Eastern District of Washington for the purpose of enforcing the Stipulation; and that I understand that sanctions may be imposed by the Court, including an order for contempt, if I fail to abide by and comply with all the terms, conditions and restrictions imposed by the Stipulation.

Date

Signature